

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 ANGELA LUGO and ANDREW
11 BRYNILDSON, individually and on behalf
12 of all others similarly situated,

13 Plaintiffs,

14 v.

15 AMAZON.COM, INC.

16 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

1 Plaintiffs Angela Lugo and Andrew Brynildson, individually and on behalf of all others
2 similarly situated, by and through their attorneys, make the following allegations pursuant to the
3 investigation of their counsel and based upon information and belief, except as to allegations
4 specifically pertaining to themselves, which are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This is a class action suit brought against Defendant Amazon.com Inc. (“Amazon”
7 or “Defendant”) for its unlawful retention of Plaintiffs’ and its other New York and Minnesota
8 customers’ personally identifiable information, including their names, addresses, credit card
9 information, and video rental history in violation of the New York Video Consumer Privacy Act,
10 N.Y. General Business Law (“GBL”) §§ 670-675 (“NYVCPA”) and Minnesota’s M.S.A.
11 § 325I.01-03 (the “Minnesota Statute”).

12 2. Amazon is a leading technology company that rents videos for streaming to
13 consumers through its Amazon Prime Video platform.

14 3. Amazon maintains a digital record system that details the rental histories of every
15 customer that rents a video from Amazon.

16 4. Amazon also maintains records containing its customers’ billing addresses.

17 5. As a result, Amazon maintains a digital dossier on millions of consumers
18 throughout New York and Minnesota. These records contain not only its customers’ credit card
19 numbers and billing/contact information, but also a detailed account of its customers’ video rental
20 histories.

21 6. In recognition of the fact that companies who rent digital media – like Amazon –
22 must collect certain confidential and sensitive consumer information with respect to personal
23 viewing habits, New York and Minnesota law requires such companies to “destroy personally
24 identifiable information as soon as practicable.” GBL § 673(5); M.S.A. § 325I.02(6).

25 7. However, in direct contravention of the protections afforded to New York and
26 Minnesota consumers under the NYVCPA and the Minnesota Statute § 325I.02(6), Amazon
27 maintains and stores its customers’ names, credit card numbers, billing and contact information,
28 and most importantly, sensitive video rental histories for an indefinite period of time.

are in excess of \$5,000,000.00, exclusive of interest and costs, and at least one member of the proposed class is a citizen of a state different from Defendant.

22. This Court has personal jurisdiction over Defendant because Defendant has purposefully availed itself of the laws and benefits of doing business in this State, and Plaintiffs' claims arise out of each of Defendant's forum-related activities. Furthermore, a substantial portion of the events giving rise to Plaintiff's claims occurred in this District.

23. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

STATEMENT OF FACTS

The Federal Video Privacy Protection Act and Digital Dossiers

24. The desire to keep video rental history records private led Congress to enact the Video Privacy Protection Act of 1988, 18 U.S.C. § 2710 ("VPPA"). Inspired by the release of video rental records of Supreme Court Justice Nominee Robert H. Bork and his family, Congress promulgated the Act to explicitly preserve United States citizens' right to privacy in their video rental histories.

25. When the VPPA was introduced, Senator Paul Simon noted that:
 There is no denying that the computer age has revolutionized our world. Over the past 20 years we have seen remarkable changes in the way each one of us goes about our lives. Our children learn through computers. We bank by machine. We watch movies in our living rooms. These technological innovations are exciting and as a nation we should be proud of the accomplishments we have made. Yet, as we continue to move ahead, we must protect time honored values that are so central to this society, particularly our right to privacy. The advent of the computer means not only that we can be more efficient than ever before, but that we have the ability to be more intrusive than ever before. *Every day Americans are forced to provide to businesses and others personal information without having any control over where that information goes. These records are a window into our loves, likes, and dislikes.*

S. Rep. No. 100-599 at 7-8 (1988) (emphasis added).

26. One of the original drafters of the VPPA, Senator Patrick Leahy, remarked that "the trail of information generated by every transaction is now recorded and stored in sophisticated

1 record-keeping systems is a new, more subtle and pervasive form of surveillance.” S. Rep. No.
2 100-599 at 8 (1988).

3 27. In recognition of the sensitivity of the video renting information, the VPPA requires
4 video tape service providers, like Amazon, to destroy “personally identifiable information as soon
5 as practicable, but no later than one year from the date the information is no longer necessary for
6 the purpose for which it was collected” 18 U.S.C. § 2710(e).

7 28. However, the VPPA differs from the NYVCPA and Minnesota Statute § 325I.02(6)
8 in that it only provides a private right of action for the wrongful *disclosure* of personally
9 identifiable information, and not failure to destroy it. *See* 18 U.S.C. § 2710(c) (providing private
10 right of action for a “violation of this section” immediately after the disclosure prohibitions in
11 section (b), but not listing the destruction requirements until section (e)).

12 ***The New York Video Consumer Privacy Act and Minnesota Statute § 325I.02(6)***

13 29. On the heels of Congress having passed the VPPA, the New York Legislature
14 passed the NYVCPA in 1993 “to protect the personal privacy of individuals and their families who
15 rent video cassette tapes and movies and similar audio visual materials.” GBL § 671.

16 30. In his sponsor memorandum, Assemblyman Anthony J. Genovesi noted:

17 Video lists have enormous commercial utility, which adds to the
18 likelihood that an individual’s entertainment preferences will be
19 disclosed. Mailing lists are easily devised based on categorizing
20 an individual’s viewing habits as documented by video retail
21 establishments’ records. For example, catalog companies and
22 direct mail sales companies are naturally interested in obtaining
23 lists of people who rent children’s films, physical fitness films,
24 adventure films, or adult films.

25 Exhibit A, Sponsor Memo at 3.

26 31. In furtherance of those concerns, like the VPPA, the NYVCPA requires that video
27 tape service provides, like Defendant, “destroy personally identifiable information as soon as
28 practicable, but no later than one year from the date the information is no longer necessary for the
purpose for which it was collected” GBL § 673(5).

32. However, unlike the VPPA, the NYVCPA explicitly provides a private right of

1 action to enforce that statutory requirement. *See* GBL § 675(1).

2 33. Specifically, under the NYVCPA, the private right of action is located at the end of
3 the Act and extends to all “violation[s] of this *article*,” which refers to Article 32 of the General
4 Business Law, *i.e.*, the NYVCPA.

5 34. This deviation from the VPPA is not an accident. Indeed, Assemblyman Genovesi
6 specifically noted in his sponsor memorandum that due to the shortcomings of the VPPA, “a
7 separate state law is needed in New York to give her citizens meaningful protection from unwanted
8 intrusions.” Ex. A, Sponsor Memo at 3.

9 35. Minnesota’s law governing video rental records are similar to the NYVCPA.

10 36. Minnesota law has the same language found in the NYVCPA, requiring video tape
11 service provides, like Defendant, to “destroy personally identifiable information as soon as
12 practicable, but no later than one year from the date the information is no longer necessary for the
13 purpose for which it was collected” M.S.A. § 325I.02(6).

14 37. And, like NYVCPA, the Minnesota Statute explicitly provides a private right of
15 action to enforce that statutory requirement. *See id.* at § 325I.03.

16 38. Specifically, under the Minnesota Statute, “a consumer who prevails or substantially
17 prevails in an action brought under this section is entitled to a minimum of \$500 in damages,
18 *regardless of the amount of actual damage proved*, plus costs, disbursements, and reasonable
19 attorney fees.” *Id.* (emphasis added).

20 39. As a result, by its plain terms, Minnesota Statute § 325I.03 affords greater
21 protections than does VPPA.

22 ***A Brief Overview of Renting Videos From Amazon***

23 40. Amazon allows consumers to rent videos to instantly stream on their devices.

24 41. Consumers must first create an account with Amazon which requires them to input
25 their name, date of birth, email address, billing address, and credit card information.

26 42. After creating an Amazon account, renting a video through Amazon is a four-step
27 process. First, the customer logs onto Amazon by entering her username and password. Second,
28

the customer searches Amazon's selections by using its interface. Third, after the customer identifies a video that she wishes to rent, the customer clicks on that video. Fourth, the page for the video will present the option to rent or buy the video. If a customer clicks the "rent" button, Amazon will charge the credit card on file with the Amazon account and the video will be available for streaming for a limited period of time.¹

43. The customer must watch the video within 30 days of the rental and has 48 hours from first viewing the video to complete it.

44. After 30 days of the rental, or after 48 hours from first viewing the video, whichever comes earlier, the video is no longer accessible to the customer.

45. At no time does Amazon obtain the consent of its customers to retain their personally identifiable information beyond the period permitted by law.

46. Amazon requires customers to use only credit or debit cards to rent videos from Amazon.

47. All rental transactions are final.

48. Amazon will only offer a refund for a video rental within 48 hours of purchase, and only if the customer has not started watching the rental.

Amazon Systematically Violates the NYVCPA and Minnesota Statute § 325I.02(6)

49. With every rental transaction, Amazon collects, stores, and maintains its customers' name, credit and debit card information, billing address, and video rental history for an indefinite period of time.

50. The video rental histories that Amazon stores include every video that the customer has ever rented from Amazon, as well as information which identifies the customer as having requested or obtained specific video materials or services.

51. In light of the fact that its customers' rental transactions are necessarily completed within 30 days from the date of rental, and given Amazon's policy not to provide refunds for charges after 48 hours, Amazon systematically violates New York law by storing and maintaining

¹ Depending on a customer's account settings, a customer may need to input a five-digit security pin to complete the rental.

1 its customers' "personally identifiable information," as that term is defined by the statutes, for
2 longer than 30 days, or at the very least, for longer than one year.

3 **CLASS ACTION ALLEGATIONS**

4 52. Plaintiff Lugo seeks to represent a class of all New York residents who (a) rented a
5 video from Amazon wherein (b) Amazon retained for more than 30 days their personally
6 identifiable information, including information that identifies the person as having requested or
7 obtained specific video materials or services, and (c) retains the personal identifiable information
8 without their consent.

9 53. Plaintiff Brynildson seeks to represent a class of all Minnesota residents who (a)
10 rented a video from Amazon wherein (b) Amazon retained for more than 30 days their personally
11 identifiable information, including information that identifies the person as having requested or
12 obtained specific video materials or services, and (c) retains the personal identifiable information
13 without their consent.

14 54. Members of the Classes are so numerous that their individual joinder herein is
15 impracticable. On information and belief, members of the Classes number in the millions. The
16 precise number of Class members and their identities are unknown to Plaintiffs at this time but may
17 be determined through discovery. Class members may be notified of the pendency of this action
18 by mail and/or publication through the distribution records of Defendant.

19 55. Common questions of law and fact exist as to all Class members and predominate
20 over questions affecting only individual Class members. Common legal and factual questions
21 include, but are not limited to, whether Defendant has violated New York or Minnesota law by
22 storing and maintaining personally identifiable information, including video rental histories for
23 longer than 30 days; and whether Class members are entitled to statutory damages for the
24 aforementioned violations.

25 56. The claims of the named Plaintiffs are typical of the claims of the Classes because
26 the named Plaintiffs, like all other Class members, rented videos from Defendant and had their
27 personally identifiable information, including video rental histories stored and maintained by
28

1 Defendant for longer than 30 days.

2 57. Plaintiffs are adequate class representatives because their interests do not conflict
3 with the interests of the Class members they seek to represent, they have retained competent
4 counsel experienced in prosecuting class actions, and they intend to prosecute this action
5 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs
6 and their counsel.

7 58. The class mechanism is superior to other available means for the fair and efficient
8 adjudication of the claims of Class members. Each individual Class member may lack the
9 resources to undergo the burden and expense of individual prosecution of the complex and
10 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases
11 the delay and expense to all parties and multiplies the burden on the judicial system presented by
12 the complex legal and factual issues of this case. Individualized litigation also presents a potential
13 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
14 management difficulties and provides the benefits of single adjudication, economy of scale, and
15 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment
16 of the liability issues will ensure that all claims and claimants are before this Court for consistent
17 adjudication of the liability issues.

18 59. Plaintiffs bring their claims in this action individually and on behalf of members of
19 the Classes against Defendant.

20 **COUNT I**
21 **Violation of the New York Video Consumer Privacy Act,**
22 **N.Y. GBL §§ 670-675**

23 60. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
24 forth herein.

25 61. Plaintiff Lugo brings this claim individually and on behalf of the members of the
26 proposed New York Class against Defendant.

27 62. Amazon is a "video tape service provider" as defined by the NYVCPA, because it
28 "[e]nage[s] in the business of rental of prerecorded video cassette tapes or similar audio visual

materials.” GBL § 672(4).

63. Plaintiff Lugo is a “consumer” as defined by the NYVCPA, because she is a “renter ... of goods or services from a video tape service provider.” GBL § 672(1).

64. The NYVCPA requires video tape service providers “destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected” GBL § 673(5).

65. The NYVCPA defines “personally identifiable information” as “any information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider.” GBL § 672(1).

66. As Amazon’s customer video rental transactions are completed within 30 days of the rental (as the video is no longer accessible to the customer after that time), and Amazon does not provide refunds for charges that are more than 48 hours old, it is not necessary for Amazon to store and maintain Plaintiff Lugo’s and the Class’s personally identifiable information and personal video rental histories for longer than 30 days.

67. Accordingly, and in violation of GBL § 673(5), Amazon has failed to destroy its customers’ personally identifiable information as soon as practicable after it was no longer necessary for the purpose for which it was collected.

68. Nonetheless, Amazon has stored and maintained Plaintiff Lugo’s personally identifiable information, as that term is defined by the NYVCPA, for well over 30 days since she rented a video from Amazon.

69. Further, Amazon does not have a policy in place to timely destroy “personally identifiable information,” as required by the NYVCPA.

70. Pursuant to GBL § 675, Plaintiff Lugo and the Class have been injured by the violations of GBL § 673(5), and seek damages of not less than \$500 each, regardless of the amount of actual damage proved, plus costs, disbursements, and reasonable attorneys’ fees.

COUNT II
Violation Minnesota Statute M.S.A. § 325I.01-03

71. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

72. Plaintiff Brynildson brings this claim individually and on behalf of the members of the proposed Minnesota Class against Defendant.

73. Defendant is a “videotape service provider” as defined by M.S.A. § 325I01(5), because it “[e]nage[s] in the business of rental of prerecorded videocassette tapes or similar audiovisual materials.”

74. Plaintiff Brynildson is a “consumer” within the meaning of the statute because he is a “renter ... of goods or services from a videotape service provider.” *Id.* at § 325I01(2).

75. The Minnesota Statute requires video tape service providers “destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected” M.S.A. § 325I02(6).

76. The Minnesota Statute defines “personally identifiable information” as “information that identifies a person as having requested or obtained specific video materials or services from a videotape service provider.” M.S.A. § 325I01(3).

77. As Amazon’s customer video rental transactions are completed within 30 days of the rental (as the video is no longer accessible to the customer after that time), and Amazon does not provide refunds for charges that are more than 48 hours old, it is not necessary for Amazon to store and maintain Plaintiff Brynildson’s and the Class’s personally identifiable information and personal video rental histories for longer than 30 days.

78. Accordingly, and in violation of Minnesota law, Defendant has failed to destroy its customers’ personally identifiable information as soon as practicable after it was no longer necessary for the purpose for which it was collected.

79. Nonetheless, Defendant has stored and maintained Plaintiff Brynildson’s personally identifiable information for well over 30 days since he rented a video from Defendant.

1 Dated: September 1, 2022

Respectfully submitted,

2
3 **CARSON NOEL PLLC**

By: /s/ Wright A. Noel
4 Wright A. Noel

5 Wright A. Noel (State Bar No. 25264)
6 20 Sixth Avenue NE
7 Issaquah, WA 98027
8 Telephone: (425) 837-4717
9 Facsimile: (425) 837-5396
10 Email: wright@carsonnoel.co]

11 *Local Counsel for Plaintiffs and the Putative Class*

12 **BURSOR & FISHER, P.A.**

By: /s/ Philip L. Fraietta
13 Philip L. Fraietta

14 Philip L. Fraietta *
15 888 Seventh Avenue
16 New York, NY 10019
17 Telephone: (646) 837-7150
18 Facsimile: (212) 989-9163
19 Email: pfraietta@bursor.com

20 **BURSOR & FISHER, P.A.**

21 Joel D. Smith *
22 1990 North California Boulevard, Suite 940
23 Walnut Creek, CA 94596
24 Telephone: (925) 300-4455
25 Facsimile: (925) 407-2700
26 Email: jsmith@bursor.com

27 **BURSOR & FISHER, P.A.**

28 Christopher Reilly *
701 Brickell Ave, Suite 1420
Miami, FL 33131
Telephone: 305) 330-5512
Email: creilly@bursor.com

** Pro Hac Vice Application Forthcoming
Attorneys for Plaintiffs and the Putative Class*